CHAPTER - 8.

CONSTITUTIONAL AND LEGAL PROVISIONS

8.1. CONSTITUTIONAL AND LEGAL PROVISIONS

The chapter discusses about the constitutional and legal provisions of Child Labour Act. As there are various reasons for the high incidence of child labour in India. However, our constitution provides for the protection of those children from involvement in economic activities which is unsuited to their age. A directive principle of state policy in the Constitution strongly restates that children should not be involved in child labour and this is also provided in the Fundamental Rights. Government of India stands committed to the elimination of child labour in the country. But despite of all the hard work our constitution and government made are ineffectual because children are still found to be working at a tender age and the main reasons for their working may include non-awareness of Legislation coupled with poor implementation of Child Labour Act. The other reason for the high incidence of prevailing child labour in India stated may be matters relating to children also receive low priority when it comes to implementation. Nevertheless, let us now discuss about the Child Labour Prohibition Act and Legislation.

Act is designed to protect the interest of a class of society who, because of their economic conditions, deserves such protection. With a view to pass the test of reasonable classification there must exist intelligible differentia between persons or thing grouped together from those who have

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1 Bhagwan PD. Singh, Shukla Mahanty; Children at Work, : pg. 235)
been left out and there must by a reasonable nexus with the object to be achieved by the legislation.

The court must strive to interpret the status as to protect and advanced the object and purpose of enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

PART I

PRELIMINARY

I. short title, extent and commencement –

(1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.

(2) It extends to the whole of India

(3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the official Gazetteer, appoint and different dates may be appointed for different States and for different classes of establishments.

May and shall – where the Legislature uses two words “may” and “shall” in two different parts of the same provision, prima facie it would appear that the Legislature manifested its intension to make one part directory and another mandatory. But that by itself is not decisive. The power of the court still to ascertain the real intension of the Legislature by carefully examining the scope of statute to find out whether the provision is directly or mandatory remains unimpaired even where both the words are used in the same provision.
In interpreting the provisions the exercise undertaken by the Court is to make explicit the intention of the Legislative which enacted the legislation. It is not for the Court to reframe the legislation for the very good reason that the powers to “legislate” have not been conferred on the Court.

In order to sustain the presumption of constitutionally of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation.

II. DEFINITIONS

in this Act, unless the context otherwise requires,

(This section of definition defines the various words and expression occurring in the Act)

1. “appropriate government” means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the central government, and in all other cases, the state government;  
2. “child” means a person who has not completed his fourteenth year of age; 
3. “day” means a period of twenty-four hours beginning at midnight; 
4. “establishment” includes a shop, commercial establishment, work-shop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment; 
5. “family” in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
vi. “occupier”, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;

vii. “port authority” means any authority administering a port;

viii. “prescribed” means prescribed by rules made under Sec.18;

ix. “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

x. “Workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

xi. (Interpretation of section - The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section)

**PART II**

**PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES**

3. Prohibition of employment of children in certain occupations and processes – No child shall be employed or permitted to work in any of the occupations set forth in Part B of the Schedule is carried on:

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, government.
Comment: this section impose prohibition on employment of children in the occupation and processes specified in the Schedule.

Proviso – A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive itself.

4. Power to amend the Schedule – the Central Government, after giving by notification in the official Gazette, not less than three months notice of its intention to do so, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amending accordingly.

Comment: this section empowers the Central Government to amend the Schedule so as to include therein any occupation or process considered necessary.

5. Child Labour Technical Advisory Committee –

(i) The Central Government may, by notification is in official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereinafter in this section referred to as the Committee to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(ii) The committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
(iii) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(iv) The Committee may, if it deems it necessary to do so, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(v) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Comment: this section empowers the Central Government to constitute the Child Labour Technical Advisory Committee for giving advice in the matter of inclusion of any occupation and process in the Schedule.

PART III
REGULATIONS OF CONDITIONS OF WORK OF CHILDREN

6. Application of Part: - the provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or process referred to in Sec. 3 is carried on.

Comment: this section lays down that provisions of this Part shall apply to an establishment in which none of the, prohibits occupations or processes is carried on.

7. Hours and period of work –
(i) No child shall be required or permitted to work in any establishments of such number of hours as may be prescribed for such establishment or class of establishments.

(ii) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(iii) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section(2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(iv) No child shall be permitted or required to work between 7 pm to 8 am.

(v) No child shall be permitted or required to work in any establishment on any day on which he has already been working in another establishment.

Comment: this section prescribes working hours for a child labour.

Provision if mandatory or directory – the surest test for determination as to whether the provisions are mandatory or directory is to see whether the sanction is provided therein.

8. Weekly holidays – every child employed in an establishment shall be allowed in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Comment: this section lays down that a weekly holiday should be allowed to every child labour.
9. Notice to Inspector—(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of the Act in relation to such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:

(a) The name and situation of the establishment;
(b) The name of the person in actual management of the establishment;
(c) The address to which communication relating to the establishment should be sent; and,
(d) The nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of the Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written containing the following particulars as are mentioned in sub-section (1).

Explanation— for the purposes of sub-sections (1) and (2), "date of commencement wherein any process is carried on by the occupier with the aid of his family or to any schools established by, or receiving assistance or recognition from, Government.

Comment: this section makes provision for furnishing of information regarding employment of a child labour to Inspector.

Explanation— it is now well settled that an explanation added to a statutory provision is not a substantive in any sense of the term but as the plain meaning

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2 The Child Labour (Prohibition and Regulation) Act, 1986
of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

10. Disputes as to age – if any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work of a certificate as to the age of such child granted by the prescribed authority, be referred by the Inspector for decision to the prescribed medical authority.

Comment: this section makes provisions for settlement of disputes as to age of any child labour.

11. Maintenance of register – there shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried in any such establishment showing –

(a) The name and date of birth of every child so employed or permitted to work;

(b) Hours and periods of work of any such child and the intervals of rest to which he is entitled;

(c) The nature of work of any such child; and

(d) Such other particulars as may be prescribed

Comment: this section makes provision for maintenance of register in respect of child labour.

12. Display of notice containing abstract of Sec.3 and 14 Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a
notice in the local language and in the English language containing an abstract of Sec. 3 and 14,

Comment: this section makes provision for display of notice in a conspicuous place at every railway station or port of work regarding prohibition of employment of child labour, penalties, etc., in the local language and in the English language.

13. Health and safety – (1) the appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters namely:

(a) Cleanliness in the place of work and its freedom for nuisance;
(b) Disposal of wastes and effluents;
(c) Ventilation and temperature;
(d) Dust and frame;
(e) Artificial humidification;
(f) Lighting;
(g) Drinking water;
(i) Latrine and urinals;
(j) Spittoons;
(h) Fencing of machinery;
(k) Work at or near machinery in motion;
(l) Employment of children on dangerous machines;
(m) Instructions, training and supervision in relation to employment of children on dangerous machines;
(n) Device for cutting off power;
(o) Self-acting machinery;
(q) Floor, stairs and means of access;
(r) Pits, sumps, openings in floors, etc.;
(s) Excessive weight;
(t) Protection to eyes;
(u) Explosive or inflammable dust, gas, etc.;
(v) Precautions in case of fire;
(w) Maintenance of buildings; and
(x) Safety of buildings and machinery

Comments: this section lays down the Government is required to make rules for the health and safety of the child labour.

PART IV
MISCELLANEOUS

14. Penalties – (1) whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.
(2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than which may extend to two years.
(3) Whoever-
(a) Fails to get notice as required by Sec. 9, or

(b) Fails to maintain a register as required by sec. or makes any false in any such register; or

(c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made there under;

Shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both

Comments: this section provision for penalty for contravention of the provisions of the Act.


(i) For Cl. (a), the following clauses shall be sub situated, namely:

“(a) ‘adolescent’ means a persons who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) ‘Adult’ means a person who has completed his eighteenth year of age;”:

(ii) After Cl. (b), the following clause shall be inserted, namely:

“(bb) ‘child’ means a person who had not completed his fourteenth year of age;”.

Comment: under this Sec.2 of the Minimum Wages act, 1948 has been amended so as to define the terms “adolescent”, “adult” and “child”.

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3 The Child Labour (Prohibition and Regulation) Rules, 1988
8.2. Child labour legislation

Laws are made for the protection and promotion of the interests of people with a view to ensuring them happy and satisfying standards of life. They derive their social sanctions from various national and international covenants. Among developing countries, India has been playing an active member on international organizations by singing various international declarations and agreements prepared and declared by these organizations. Special mention may be made of the declaration of Rights of child (1959) and United Nations Conventions on, “The Rights of Child” which has become an International Law on Sept. 2, 1990, Article 32 of this convention deals with child labour. This section envisages fixation of minimum age for admission to employment, appropriate penalties or other sanctions to ensure the effective enforcement of these provisions. In India, the Factories Act of 1881 for the first time banned the working of children below seven years in factories. Further, Child Labour (Prohibition and Regulation) Act, 1986 and the National Policy on Child Labour, 1987 was formulated to provide relief to children who work in factories.

8.3. ILO on Child Labour and India’s Position

India is a party to ILO and as such has an obligation to adopt the ILO Conventions on Child Labour. Till now, in respect of children and young persons, the ILO has adopted 18 Conventions concerning their minimum age for admission to employment, medical examination and night work. On these subjects, ILO has adopted nine recommendations.

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Few conventions related to minimum age for employment have been listed in the Table 8.1.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of Convention</th>
<th>Main Provisions</th>
<th>Ratification/ Non-ratification by India</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Minimum Age (Industry) Convention No. 5), 1919</td>
<td>Prohibits employment of children below 14 years of age in any public and private industrial undertaking other than the undertaking in which only family members are employed</td>
<td>Ratified. Consequently Factories Act, 1948; Mines Act, 1952; Employment of Children Act, 1938; Beedi and Cigar workers (Conditions of Employment) Act, 1966; Motor Transport Workers Act, 1961 were passed.</td>
</tr>
<tr>
<td>2.</td>
<td>Minimum Age (Industry) Convention (revised) (No. 57), 1937.</td>
<td>This Convention raises the Minimum age for admission to industrial establishments from 14 years to 15 years</td>
<td>Not Ratified; Reasons not known</td>
</tr>
<tr>
<td>3.</td>
<td>Minimum Age Convention (No. 123), 1973</td>
<td>Lays down 16 years as minimum age for admission to employment</td>
<td>Not ratified, may be due to difficulties in review of different Acts.</td>
</tr>
<tr>
<td>4.</td>
<td>White lead</td>
<td>1921 prohibits, the</td>
<td>India has ratified</td>
</tr>
<tr>
<td>S.NO.</td>
<td>Name of Convention</td>
<td>Main Provision</td>
<td>Ratification/ Non-Ratification by India</td>
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</tr>
<tr>
<td>1.</td>
<td>Night work of young persons (Industry), Convention (No.6), 1919</td>
<td>Provides that young persons upto 18 years of age are not to be employed during night in any public or private undertaking</td>
<td>Ratified</td>
</tr>
<tr>
<td>2.</td>
<td>Night work of young persons (Industry) Convention (No.90), (Revised), 1948</td>
<td>Night means 12 consecutive hours. Industrial undertaking includes only mines, factories, railways and post. Lays down that young persons upto age of 18 years are not to be employed during night in any public or private undertaking</td>
<td>Ratified</td>
</tr>
</tbody>
</table>

Source: ILO Publication
Apart from these Conventions, the ILO has adopted certain recommendations and resolutions for the protection of children and young persons. Recommendations entitled have been mentioned below:

- The Minimum Age (Non-Industrial Employment) Recommendation (No. 41);
- The Minimum Age (Family Undertaking) Recommendation (No. 52), 1937;
- The Minimum Age (Coal Mines) Recommendation (NO.96), 1953;
- The Minimum Age (Underground Work) Recommendation (No. 1240, 1965;
- Lead Poisoning (Women and Children) Recommendation (No.4), 1919;
- Unemployment (Young person's) Recommendation (No.45), 1935; etc and resolution adopted in 1945 which drew attention towards maintenance, health, education, employment, protection and general welfare of children and young persons.

8.4 CONSTITUTIONAL PROVISIONS AND OTHER LEGISLATIVE ENACTMENTS

One of the major areas of protective relating to children is child labour. One of the main objectives of our Constitution is the protection of children from adverse effects of their employment on their physical and mental development.

8.4.1 CONSTITUTIONAL PROVISIONS

Selected articles and provisions of the Government of India, Indian Constitution
• Article 21

Prohibition of traffic in human beings and forced labour-

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

• Article 24

Prohibition of employment of children in factories, etc.- no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

• Article 39

Certain principles of policy to be followed by the state- the state shall, in particular, direct its policy towards securing:

(1) That the citizens, men and women equally, have the right to an adequate means of livelihood;

(2) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(3) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(4) That there is equal pay for equal work for both men and women;

(5) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(6) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

- **Article 41**

  Right to work, to education to public assistance in certain cases- the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

- **Article 43 A**

  Participation of workers in management of industries- the State shall take steps, by suitable legislation or in any other way; to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.
Article 45

Provision for free and compulsory education for children- the State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

The other provisions of our constitution relating to children are as follows:

- Article 15(3) of the constitution lays down that,

  "Nothing in this Article shall prevent the State from making any special provision for women and children".

Bundhua Mukti Morch vs Union of India ¹ (AIR (1992) SC, 1858. "For children to develop in a healthy manner and in conditions of freedom and dignity educational facilities, just and humane conditions of work. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state neither the central government nor any state government has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

- Article 24 provides that

  "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

Salal Hydro Project vs State of Jammu and Kashmir ² [(AIR (1984)SC, 177 at page 183] It was held no child below the age of fourteen years can be allowed to be employed in construction work.
The Article 39 provides that "the State shall, in particular, direct its policy towards securing:

(e) That the health and strength of the workers, women and men, and the tender age of children are not abused and that citizens are not forced by their age or strength, and-

(f) That children and youth are protected against exploitation and against moral and material abandonment.

Sheela Barse & Another vs Union of India & Others ³ AIR (1986) SC 1773, Children Acts passed by several states are a beneficial piece of legislation for the fulfillment of the constitutional obligation under Article 39 (f) and it is the duty of every state to implement their provisions to carry out the directive principle contained in that Article. It is also the duty of the states to bring such Article into force where it is not done.

M.C.Mehta vs State of Tamil Nadu & Others ⁴ AIR (1991) SC 417, it was held that children are to be provided basic diet during working period.

8.4.2 LEGISLATIVE ENACTMENTS

At present, there are 13 major legislative enactments that provide legal protection to children in various occupations, these are:

(i) Factories Act, 1948
(ii) Mines Act, 1952
(iii) Plantation Labour Act, 1951
(iv) Merchant Shipping Act, 1958
(v) Motor Transport Workers Act, 1961
(vi) Dock Workers Regulations and Employment Act,
(vii) Children (Pledging of Labour) Act, 1933
(viii) Employment of Children Act, 1938
(ix) Apprentice Act, 1961
(x) Bidi and Cigar Works (Conditions of employment) Act, 1966
(xi) Contract Labour (Regulation and Abolition) Act, 1970
(xii) Radiation Protection Rules 1971- under the atomic Energy Act, 1962
(xiii) Shops and Commercial Establishments Acts under different nomenclature in States.

From time to time, amendments have been made in most of the above statues, because of the progressive outlook of the governments for improving the conditions of the important legislation that regulate the working conditions of child workers and mitigate the adverse effect of employment on their health, education and training, etc.

➤ THE FACTORIES ACT, 1948

The first Factories Act in India was passed in 1881. It was designed primarily to protect children and to provide for some health and safety measures. The Factories Act, 1948 came into force on the 1st day of April, 1949. Its object is to regulate the conditions of work in manufacturing establishments which come within the definition of the term ‘factory’ as used in the Act. The Act extends to whole of India except the State of Jammu and Kashmir.

Meaning of ‘Factory’

According to Sec. 2 (m), ‘factory’ means any premises including the presents thereof-
(i) Whereon 10 or more workers are working or were working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

In simple words, a factory is a premise whereon 10 or more persons are engaged if power is used, or 20 or more persons are engaged if power is not used, in a manufacturing process.

**Meaning of 'Precinct'**

The definition of the term 'Factory' in Sec 2 (m) envisages premises which have precincts, as the expression used in the definition is 'premises including the precincts thereof'. Precincts are usually understood as a space enclosed by walls or fences. Where premises are buildings, they would include precincts.

**Meaning of 'Manufacturing process'**

Manufacturing process [Sec. 2 (k)] it means any process for-

(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) Pumping oil, water, sewage, or any other substance, or
(iii) Generating, transforming or transmitting power, or

(iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding, or

(v) Constructing and reconstructing, repairing, refitting, finishing, breaking up ships or vessels, or

(vi) Preserving or storing any article in cold storage

In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation, i.e., the article must become commercially known as something different from which it acquires its existence.

A "Child" under the Act, is defined as a person who has not completed the fifteenth year of age. A "young person" is defined as either a child or an adolescent, who has completed his fifteenth year but not eighteenth year. Thus, "young person's" may be divided into three categories:

(A) Those who are under fourteen years:

They are totally prohibited by this Act from entering into employment in factories. It was held that the prohibition is absolute and not restricted to employment in one of manufacturing process; thus a child employed as a sweeper to clean the floor of a factory is in contravention of the provisions of the section, even though he is not employed in any of the manufacturing process.
Manufacturing process:

The following employment is also prohibited by the Court:

(a) Sorting of groundnuts in a Courtyard near the machinery room for decorticating - Ramanath Vs K.E.

(b) To employ children less than 8 years in plating straw in a workroom, the benefit of which goes to the mother, was held liable to penalty- Beedon Vs Parrot.

(c) Oiling of parts of machinery of the spinning mill by a young person during meal time, though done without orders and for worker’s own amusement was held in Prior Vs. Slaithwaite Spinning Co. violation of law making the occupier liable to fine.

A landmark judgment was given in M.C.Mehta vs State of Tamil Nadu (1996) 6 SCC756

The Supreme Court noted that child was an all India evil and without a concerted effort the ignominy would not get wiped out. The poverty is the basic reason that compels a child to be a labourer.

A three Judges Bench of the Supreme court, consisting of justice Kuldip Singh, B.L.Hansai and S.B.Majumdar, handed over to the nation a landmark judgment the essence of which is that children below 14 years cannot be employed in any factory or mine or hazardous work and that they must be given education as mandated by Article 45.

For the children employed in non-hazardous jobs, the court further directed that the Inspector (as provided in the Child Labour Prohibition and Regulation Act, 1986) shall have to see that the working hours of
the child are not more than four to six hours a day and he or she receives education at least for two hours each day, the entire cost of which will be borne by the employer.

Persons who are between 14 and 15 years: they can be employed under the following restrictions provided under sections 68, 69 and 71 to 75 of the Act;

1) Such persons should have a certificate of fitness issued by a surgeon and should carry a token of such certificate.

2) The certifying surgeon should follow the procedure laid down in section 69

3) They should not work at night i.e., twelve consecutive hours including the period from 10:00 pm to 6:00 a.m.

4) They should work not more than four and a half hours a day.

5) The period of work is to be limited to two shifts

6) The shifts should not overlap

7) Each child has to be employed in one relay.

8) The spread over is not to exceed five hours and should also not change except once in 30 days.

9) They should not be employed in two separate factories on the same day.

10) The employer should display a notice regarding the periods of work for such children.

11) The manager of the factory should maintain a register in respect of such child-workers
12) No such child be employed except in accordance with the notice of Periods of work displayed and the entries against his name in Register of child workers.

Section 75 empowers the inspectors to require any such person for re-examination by Surgeon and he may prohibit the employment till the examination is made.


If adolescent workers are not possessing fitness certificate are found working in factory, it is not obligatory upon the Inspector of factories proceed under section 75 before prosecuting occupier for contravening section 69 of Factories Act.

Emporor vs Gokuldas, Haridas [ AIR (1929) BOMBAY 272]

Even in the case of fourteen years there is a need for certificate under Section 69 of Factories Act.

> THE EMPLOYMENT OF CHILDREN ACT, 1938

This Act is also applied to the whole of India. It prohibits the employment of children under 15 in any occupation connected with the transport of passenger, goods or mails by railways or connected with the port authority within the limits if any port.

With the exception of children employed as apprentices or trainees, no child between the ages of 15 -17 can be employed or permitted to work in these occupations unless he is allowed a rest interval of at least 12 consecutive hours in a day. The period of rest is to include at least 7
consecutive hours between 10 p.m. to 7 am as may be prescribed by
the appropriate government.

The act further prohibits the employment of children below the age of
14 years in workshops connected with beedi making, carpet weaving,
cement manufacturing including bagging of cement, cloth printing,
dyeing, weaving, manufacturing or matches, explosives and fire work,
mica cutting and splitting, shellac manufacturing, soap manufacturing,
tanning and wool cleaning. These provisions, however do, not apply to
workshops where work is done with the help of occupier’s family or to
any school established, aided or recognized by any state Government.

State Governments are empowered to extend the scope of the Act to
cover other employment.

8.5 REVIEW OF EXISTING PROGRAMMES FOR
REHABILITATION OF CHILD LABOUR & THE 10TH PLAN
STRATEGY

LAW, POLICY AND PROGRAMME

- As per Article 24 of the Constitution, no child below the age of
14 years is to be employed in any factory, mine or any
hazardous employment. Further, Article 39 requires the States
to direct its policy towards ensuring that the tender age of
children is not abused and that they are not forced by economic
necessity to enter avocations unsuited to their age or strength.

Recently, with the insertion of Article 21A, the State has been
entrusted with the task of providing free and compulsory
education to all the children in the age group of 6-14 years.
Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act was enacted in 1986, which seeks to prohibit employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments. In the last 5 years, the number of hazardous processes listed in the schedule of the Act has increased from 18 to 57 and occupations from 7 to 13. Recently, Government has also decided to include children working as domestic servants and those working in dhabas/roadside eateries/motels etc. in the category of hazardous occupations.

Realizing the multifaceted and complex nature of this problem, Government had embarked on a holistic and a multi-pronged programme to eliminate child labour from the country in a phased manner beginning with children working in hazardous occupations and progressively covering the children working in other occupations also. The National Policy on Child Labour announced in 1987, emphasizes the need for strict enforcement measures in the areas of high child labour concentration along with appropriate rehabilitative measures to curb this menace.

Although Government is committed to the task of elimination of child labour in all its forms, considering the nature and magnitude of the problem, gradual and sequential approach has been adopted to withdraw and rehabilitate children beginning with those working in hazardous occupations and processes.
• Government strategy is multipronged, which involves strong enforcement of the existing Act with simultaneous efforts towards rehabilitation of both parents and children through linkages with the poverty eradication and income generation programmes of the Government. This is because working children are from extremely poor families and are contributing to the meager income of their families, a blanket prohibition on all kinds of child labour without providing an alternate means of financial support is likely to punish parents who are already living in abject poverty.